

HANEY, WOLOSON & MULLINS

Wade B. Gochnour, Esquire

Nevada Bar No. 6314

Aryn M. Fitzwater, Esquire

Nevada Bar No. 8802

1117 South Rancho Drive

Las Vegas, Nevada 89102

Telephone: (702) 474-7557

Telecopier: (702) 474-7009

WadeG@hwmlvlaw.comafitzwater@hwmlvlaw.com**WHITE AND WILLIAMS LLP**

Steven E. Ostrow, Esquire

PA Bar ID # 50568

1800 One Liberty Place

Philadelphia, PA 19103-7395

Telephone: (215) 864-7000

Telecopier: (215) 864-7123

ostrows@whiteandwilliams.com**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE
COMPANY,

Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:
USA Capital First Trust Deed Fund, LLC,

Debtor.

In re:
USA SECURITIES, LLC,

Debtor.

Affects:☐ All Debtors☒ USA Commercial Mortgage Company☐ USA Securities, LLC☐ USA Capital Realty Advisors, LLC☒ USA Capital Diversified Trust Deed Fund, LLC☐ USA First Deed Fund, LLC

Case No. BK-S 06-10725 (LBR)

Case No. BK-S 06-10726 (LBR)

Case No. BK-S 06-10727 (LBR)

Case No. BK-S 06-10728 (LBR)

Case No. BK-S 06-10729 (LBR)

Chapter 11

**Jointly Administered Under
Case No. BK-S-06-10725 LBR**

Adversary No. 06-01256-LBR**LIBERTY BANK'S MOTION TO
INTERVENE**

USA COMMERCIAL MORTGAGE
COMPANY, et al.,

Plaintiffs,

vs.

HMA SALES, LLC, et al.,

Defendants

HANEY, WOLOSON & MULLINS
1117 South Rancho Drive
Las Vegas, Nevada 89102
(702) 474-7557
(702) 474-7009 Fax

1 Petitioner, Liberty Bank ("Liberty"), by and through its undersigned attorneys, hereby
2 moves to intervene in the above-captioned adversary proceeding (the "Suit") pursuant to
3 Federal Rule of Bankruptcy Procedure 7024, and in support thereof alleges as follows:
4

5 **PRELIMINARY STATEMENT**

6 1. In the Suit, plaintiffs seek, inter alia, relief with respect to certain moneys paid
7 and/or to be paid from the sale (the "Royal Hotel Sale") of the Royal Hotel located at 99
8 Convention Center Drive, Las Vegas, Nevada (the "Royal Hotel"), formerly owned by
9 defendant HMA Sales, LLC ("HMA Sales"). As the Bankruptcy Court is now aware, the sale
10 of the Royal Hotel closed on December 22, 2006 (the "First Closing").
11

12 2. Liberty has a direct interest in such sale proceeds and the Royal Hotel because
13 Liberty is a secured lender of HMA Sales. In support of this Motion, Liberty relies upon and
14 incorporates herein by reference the Statement of Claim (the "Statement of Claim") attached
15 hereto as Exhibit A, and the Declaration of Jason M. Gordon in Support of Liberty Bank's
16 Motion to Intervene (the "Gordon Decl.")).
17

18 3. The First Closing occurred without Liberty's prior knowledge or consent and
19 Liberty's loan was not paid-off at such closing. Consequently, Liberty retains all of its security
20 interests, liens and deed of trust encumbering, inter alia, the sale proceeds and a portion of the
21 Royal Hotel. As more fully set forth in the Statement of Claim, Liberty's loan is required to be
22 paid in full from the proceeds of the sale prior to any payments or disbursements arising
23 therefrom to plaintiffs USA Commercial Mortgage Company ("USACM") and USA Capital
24 Diversified Trust Deed Fund, LLC ("USA Capital", together with USACM, collectively the
25 "Debtors"), HMA Sales and their officers, managers, members, agents, escrow agents and all
26 other persons or entities acting on their behalf.
27
28

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1 share club membership program; and (b) Royal Vacation Suites II, a fee simple time-share
2 program.

3 9. The Receivables Loan is secured by, inter alia, the following agreements,
4 assignments and instruments (collectively, the "Liberty Security Documents"):
5

- 6 (a) Receivables Loan Agreement executed by HMA Sales and recorded
7 UCC financing statements and amendments thereto;
- 8 (b) Deed of Trust, Assignment of Rents and Proceeds, Security Agreement,
9 Financing Statement and Fixture Filing ("Deed of Trust") by HMA
10 Sales, LLC, as Trustor, to First American Title Insurance Agency, as
11 Trustee, and Liberty Bank, as Beneficiary, dated July 6, 2005 and
12 recorded July 8, 2005 in Book 20050708 at Doc/Inst. No. 2573 of
13 Official Records;
- 14 (c) Absolute Assignment of Rents, Leases, Agreements of Sale and
15 Membership Agreements ("Assignment of Rents") by HMA Sales, LLC,
16 to Liberty Bank, dated July 6, 2005 and recorded July 8, 2005 in Book
17 20050708 at Doc/Inst. No. 2574 of Official Records;
- 18 (d) Guaranty Agreements (collectively, the "Guaranty Agreements") by
19 USACM and USAIP to Liberty Bank, dated November 15, 2004; and
- 20 (e) Subordination Agreements (collectively, the "Subordination
21 Agreements") by USACM and USAIP to Liberty Bank, dated effective
22 as of July 6, 2005.

23 True and correct copies of the Liberty Security Documents are attached as Exhibit A to the
24 Gordon Decl.

25 10. Under the applicable Liberty Security Documents:

26 a. Liberty holds a first deed of trust, security interest and assignment of
27 rents and proceeds against an undivided 10.990219% fee simple interest, as tenants in common,
28 in the Air Space Parcel, together with all purchase agreements, notes, financing statements and
guarantees now existing or hereinafter arising out of the sale and financing of Timeshare
Interests by HMA Sales including, without limitation, the Timeshare Interests described in
Exhibit B to the Deed of Trust; and

HANEY, WOLOSON & MULLINS
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b. USAIP and USACM each agreed: (i) to subordinate all Subordinated Debt (as defined in the Subordination Agreements) and all claims and demands arising therefrom to all of the Senior Debt (as defined in the Subordination Agreements) owed to Liberty; (ii) that all of the Senior Debt shall be paid in full before they may be paid anything on account of the Subordinated Debt or any sums payable in connection therewith; (iii) to assign to Liberty their interest in all Subordinated Debt and all security and guarantees therefor; (iv) to hold in trust for Liberty and to promptly pay or deliver to Liberty for application to or as collateral for the Senior Debt any payment, dividend or distribution of any kind out of the sale of any assets of HMA Sales which would otherwise be payable or deliverable with respect to the Subordinated Debt; and (v) with respect to the Subordinated Debt, not to accelerate, demand or receive payment, institute court proceedings or exercise any right or remedy against HMA Sales or its assets, or assign or deliver to any person or entity other than Liberty any Subordinated Debt or any evidence thereof or security or guaranty therefor, without Liberty's prior written consent.

11. Numerous Events of Default have occurred under the Receivables Loan Agreement and Liberty Security Documents. As a result, Liberty has accelerated the Receivables Loan and HMA Sales' obligations under the Receivables Loan Agreement. As of January 24, 2007, the sum of \$3,944,235.03, together with continuing legal fees, costs and expenses incurred on or after January 1, 2007, is due and owing under the Receivables Loan Agreement. See Gordon Decl. ¶5.

THE ROYAL HOTEL SALE

12. HMA Sales agreed to sell and convey for the purchase price of \$29,100,000.00 (the "Purchase Price") its interests in the Royal Hotel (including, without limitation, the Air Space Parcel and the development rights in the Time-Share Programs), pursuant to a Purchase

1 and Sale Agreement dated as of May 22, 2006 (the "Sale Agreement") with Pacific Ocean
2 Management, LLC, as amended by a First Amendment to Purchase and Sale Agreement
3 executed as of December 14, 2006 (the "First Amendment", together with the Sale Agreement,
4 collectively the "P&S Agreement") with Royal Center Associates, LLC and Royal Resort
5 Enterprises, LLC (collectively, the "Buyers"). A true and correct copy of the P&S Agreement
6 is attached as Exhibit B to the Gordon Decl.
7

8 13. At the First Closing, (a) HMA Sales conveyed to the Buyers, by bargain and sale
9 deed, title to the Royal Hotel (including the Air Space Parcel), and (b) the Buyers delivered in
10 escrow to First American Title Insurance Company ("First American"), as escrow agent, their
11 Promissory Note Secured by Deed of Trust in the face amount of \$5,201,442.17 (the "Seller
12 Note") in favor of HMA Sales, securing the Buyers' promise to pay ninety days thereafter at a
13 second closing (the "Second Closing") the unpaid balance of the Purchase Price. The Seller
14 Note is secured by Buyers' Deed of Trust against the Royal Hotel dated as of and recorded on
15 December 22, 2006, in favor of HMA Sales, as beneficiary (the "Seller Deed of Trust",
16 together with the Seller Note, collectively the "Seller Note & DOD"). True and correct copies
17 of the Seller Note & DOD are attached as Exhibit C to the Gordon Decl.
18
19

20 14. Upon information and belief, First American, as escrow agent, also holds in
21 escrow the sum of \$450,000.00 arising out of the First Closing, most of which is payable to
22 HMA Sales under the P&S Agreement.
23

24 15. The Seller Note was placed in escrow with First American as security for HMA
25 Sales' obligation to pay in full Liberty's Receivables Loan on or before the Second Closing.
26 Under Section 6 of the First Amendment, the parties thereto agreed that the Royal Hotel
27 remains subject to the Liberty Deed of Trust and Liberty Assignment of Property Rights. The
28 parties thereto further agreed that First American shall not release the proceeds of the Seller

HANEY, WOLOSON & MULLINS
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1 Note unless and until First American receives reconveyances and releases, in recordable form,
2 of the Liberty Deed of Trust and Liberty Assignment of Property Rights so as to enable First
3 American to issue an endorsement to its title policy deleting the Liberty Bank Deed of Trust
4 and Liberty Bank Assignment of Property Rights from Schedule B of the title policy.
5

6 **LEGAL ARGUMENT**

7 16. Liberty is entitled to intervene in the Suit, as of right and/or permissively,
8 pursuant to Federal Rule of Civil Procedure 24, made applicable to this adversary proceeding
9 by Federal Rule of Bankruptcy Procedure 7024. Rule 24 provides, in pertinent part:
10

11 (a) INTERVENTION AS OF RIGHT. Upon timely
12 application anyone shall be permitted to intervene in an action . .
13 . (2) when the applicant claims an interest relating to the property
14 or transaction which is the subject of the action and the applicant
15 is so situated that the disposition of the action may as a practical
16 matter impair or impede the applicant's ability to protect that
17 interest, unless the applicant's interest is adequately represented
18 by existing parties.

16 (b) PERMISSIVE INTERVENTION. Upon timely
17 application anyone may be permitted to intervene in an action . . .
18 (2) when an applicant's claim or defense and the main action
19 have a question of law or fact in common. . . .

19 Fed.R.Civ.P. 24(a)-(b).

20 17. The Air Space Parcel and the proceeds of the Royal Hotel Sale, which remain
21 encumbered by Liberty's liens, deed of trust and security interests, are the subject of this Suit.
22 Plaintiffs seek to enjoin and obtain liens and/or a constructive trust against such sale proceeds.
23

24 18. On January 3, 2007, the Bankruptcy Court issued a Temporary Restraining
25 Order ("TRO-1"), enjoining the original defendants and their officers, managers, members,
26 escrow agents and all others acting on their behalf "from distributing any proceeds resulting
27 from the sale of the Royal Hotel Property until further order of this Court or expiration of this
28 TRO." On January 19, 2007, the Bankruptcy Court entered a Stipulated Temporary

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1 Restraining Order ("TRO-2"), continuing the effect of TRO-1 until further order of the Court,
2 and scheduling a hearing on March 2, 2007 on plaintiffs' motion for preliminary injunction and
3 application for pre-judgment writ of attachment.

4
5 19. Under the applicable Liberty Security Documents, Liberty holds a deed of trust,
6 liens, security interests and/or assignments in, inter alia, the Air Space Parcel and the remaining
7 sale proceeds paid or payable under the P&S Agreement including, without limitation, (i) the
8 proceeds payable under the Seller Note, (ii) the sale proceeds payable to HMA Sales that are
9 held or to be held in escrow by First American, and (iii) any and all sale proceeds that were
10 paid and/or disbursed to other persons and entities and hereinafter are set aside, avoided and/or
11 otherwise invalidated (all of the foregoing collateral and sale proceeds set forth in paragraph 19
12 herein are collectively referred to as the "Encumbered Collateral and Sale Proceeds").

13
14 20. In its Statement of Claim, Liberty seeks a declaration of its rights under the
15 Liberty Security Documents with respect to the Encumbered Collateral and Sale Proceeds
16 including, without limitation, declarations:

17
18 a. that Liberty's rights, deed of trust, liens, assignments and security
19 interests under the Liberty Security Documents have priority over any alleged claims and/or
20 interests of the Debtors, HMA Sales and their officers, managers, members, agents, escrow
21 agents and all other persons or entities acting on their behalf, with respect to the Encumbered
22 Collateral and Sale Proceeds;

23
24 b. that Debtors, HMA Sales and their officers, managers, members, agents,
25 escrow agents and all other persons or entities acting on their behalf, are barred and prohibited
26 from receiving payment with respect to any of the Subordinated Debt from HMA Sales until all
27 of Liberty's Senior Debt is paid;
28

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1 c. that Debtors, HMA Sales and their officers, managers, members, agents,
2 escrow agents and all other persons or entities acting on their behalf, are required to hold in
3 trust for Liberty and to promptly pay or deliver to Liberty for application to or as collateral for
4 the Senior Debt any payment, dividend, proceeds or distribution of any kind with respect to the
5 Subordinated Debt from HMA Sales; and
6

7 d. that Debtors are required to assign to Liberty any liabilities and
8 obligations asserted or alleged by Debtors to be owed by or from HMA Sales and its assets
9 including, without limitation, the claims and interests asserted by Debtors against HMA Sales
10 and its assets in this Suit, together with all security and guarantees therefor, until all of
11 Liberty's Senior Debt is paid.
12

13 21. Accordingly, absent Liberty's intervention, the adjudication of this Suit may as a
14 practical matter impair or impede Liberty's ability to protect its rights, deed of trust, liens,
15 assignments and security interests under the Liberty Security Documents against the
16 Encumbered Collateral and Sale Proceeds.
17

18 22. Further, the claims of Liberty and the Debtors in this Suit have questions of law
19 or fact in common with respect to the various parties' claims and rights in the Encumbered
20 Collateral and Sale Proceeds.
21

22 23. No party to this action represents, let alone adequately represents, the interests
23 of Liberty.

24 24. This Motion is timely filed. The Suit was commenced on December 25, 2006.
25 On January 29, 2007, Debtors filed their Amended Complaint in this Suit. None of the
26 defendants have filed responses to date. Liberty's intervention will not unduly delay or
27 prejudice the adjudication of the rights of the parties.
28

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CONCLUSION

WHEREFORE, for the foregoing reasons, Liberty respectfully requests that the Bankruptcy Court (i) approve this Motion, (ii) permit Liberty to intervene in this action, as of right or, alternatively, permissively, and to file the Statement of Claim and (iii) grant such other and further relief as this Bankruptcy Court deems just and appropriate.

January 31, 2007

HANEY, WOLOSON & MULLINS

BY: 

Wade B. Gochnour, Esquire
Nevada Bar No. 6314
Aryn M. Fitzwater, Esquire
Nevada Bar No. 8802
1117 South Rancho Drive
Las Vegas, Nevada 89102
Telephone: (702) 474-7557

-and-

WHITE AND WILLIAMS LLP
Steven E. Ostrow, Esquire
PA Bar ID # 50568
1800 One Liberty Place
Philadelphia, PA 19103-7395
Telephone: (215) 864-7000

Attorneys for Liberty Bank

HANEY, WOLOSON & MULLINS
1117 South Rancho Drive
Las Vegas, Nevada 89102
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(702) 474-7009 Fax

Exhibit A

Exhibit A

HANEY, WOLOSON & MULLINS

Wade B. Gochnour, Esquire

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In re:

USA COMMERCIAL MORTGAGE
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Debtor.

In re:

USA CAPITAL REALTY ADVISORS, LLC,

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In re:

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In re:

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Affects:

☐ All Debtors☒ USA Commercial Mortgage Company☐ USA Securities, LLC☐ USA Capital Realty Advisors, LLC☒ USA Capital Diversified Trust Deed Fund, LLC☐ USA First Deed Fund, LLC

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Chapter 11

**Jointly Administered Under
Case No. BK-S-06-10725 LBR****Adversary No. 06-01256-LBR**USA COMMERCIAL MORTGAGE
COMPANY, et al.,

Plaintiffs,

vs.

HMA SALES, LLC, et al.,

Defendants

**LIBERTY BANK'S STATEMENT OF
CLAIM**

HANEY, WOLOSON & MULLINS
1117 South Rancho Drive
Las Vegas, Nevada 89102
(702) 474-7557
(702) 474-7009 Fax

Intervenor, Liberty Bank ("Liberty"), by and through its undersigned attorneys, hereby files this Statement of Claim against defendant, HMA Sales, LLC ("HMA Sales"), and plaintiffs, USA Commercial Mortgage Company ("USACM"), and USA Capital Diversified Trust Deed Fund, LLC ("USA Capital", together with USACM, collectively the "Debtors"), and in support thereof alleges as follows:

PARTIES AND JURISDICTION

1. Liberty is a Connecticut non-stock mutual savings bank with offices located at 291 Main St., Middletown, CT 06457.

2. The Bankruptcy Court has related to jurisdiction and venue over Liberty's claims against Debtors and HMA Sales pursuant to 28 U.S.C. §§1334(b) and §1409(a), respectively.

3. Liberty's Statement of Claim presents a non-core proceeding that is related to the above-captioned jointly administered Chapter 11 bankruptcy cases (collectively, the "Bankruptcy Case") of the Debtors pending in the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court").

4. Liberty does not consent to the entry of final orders or judgment by the Bankruptcy Court.

LIBERTY'S LOAN

5. HMA Sales and Liberty entered into a \$10,000,000.00 Receivables Loan Agreement dated effective as of November 15, 2004 (as amended, the "Receivables Loan Agreement"). Capitalized terms not otherwise defined in this Statement of Claim shall have the meanings set forth in the Receivables Loan Agreement.

6. Debtor USACM and non-debtor USA Investment Partners, LLC ("USAIP") each guaranteed, as sureties, HMA Sales' obligations under the Receivables Loan Agreement.

HANEY, WOLOSON & MULLINS
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1 7. Under the terms of the Receivables Loan Agreement, Liberty provided financing
2 up to \$10,000,000.00 (the "Receivables Loan") for HMA Sales' sale of certain time-share
3 interests at the Royal Hotel located at 99 Convention Center Drive, Las Vegas, Nevada (the
4 "Royal Hotel").
5

6 8. The Royal Hotel is situated on the following two separately assessed parcels of
7 real property: (a) APN # 162-09-812-002 ("Parcel 1"); and (b) APN # 162-09-812-003 (the
8 "Air Space Parcel"). The second through eighth floors of the Royal Hotel are situated on the
9 Air Space Parcel, and the first floor of the Royal Hotel is located on a portion of Parcel 1.
10

11 9. HMA Sales established the following two time-share programs within the Air
12 Space Parcel (collectively, the "Time-Share Programs"): (a) Royal Vacation Suites, a time-
13 share club membership program; and (b) Royal Vacation Suites II, a fee simple time-share
14 program.
15

16 10. The Receivables Loan is secured by, inter alia, the following agreements,
17 assignments and instruments (collectively, the "Liberty Security Documents"):

- 18 (a) Receivables Loan Agreement executed by HMA Sales and recorded
19 UCC financing statements and amendments thereto;
- 20 (b) Deed of Trust, Assignment of Rents and Proceeds, Security Agreement,
21 Financing Statement and Fixture Filing ("Deed of Trust") by HMA
22 Sales, LLC, as Trustor, to First American Title Insurance Agency, as
23 Trustee, and Liberty Bank, as Beneficiary, dated July 6, 2005 and
24 recorded July 8, 2005 in Book 20050708 at Doc/Inst. No. 2573 of
25 Official Records;
- 26 (c) Absolute Assignment of Rents, Leases, Agreements of Sale and
27 Membership Agreements ("Assignment of Rents") by HMA Sales, LLC,
28 to Liberty Bank, dated July 6, 2005 and recorded July 8, 2005 in Book
20050708 at Doc/Inst. No. 2574 of Official Records;
- (d) Guaranty Agreements (collectively, the "Guaranty Agreements") by
USACM and USAIP to Liberty Bank, dated November 15, 2004; and
- (e) Subordination Agreements (collectively, the "Subordination
Agreements") by USACM and USAIP to Liberty Bank, dated effective
as of July 6, 2005.

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1 True and correct copies of the Liberty Security Documents are attached hereto as Exhibit "A"
2 and incorporated herein by reference.

3 11. Under the applicable Liberty Security Documents:

4 a. Liberty holds a first deed of trust, security interest and assignment of
5 rents and proceeds against an undivided 10.990219% fee simple interest, as tenants in common,
6 in the Air Space Parcel, together with all purchase agreements, notes, financing statements and
7 guarantees now existing or hereinafter arising out of the sale and financing of Timeshare
8 Interests by HMA Sales including, without limitation, the Timeshare Interests described in
9 Exhibit B to the Deed of Trust; and
10

11 b. USAIP and USACM each agreed: (i) to subordinate all Subordinated
12 Debt (as defined in the Subordination Agreements) and all claims and demands arising
13 therefrom to all of the Senior Debt (as defined in the Subordination Agreements) owed to
14 Liberty; (ii) that all of the Senior Debt shall be paid in full before they may be paid anything on
15 account of the Subordinated Debt or any sums payable in connection therewith; (iii) to assign
16 to Liberty their interest in all Subordinated Debt and all security and guarantees therefor; (iv) to
17 hold in trust for Liberty and to promptly pay or deliver to Liberty for application to or as
18 collateral for the Senior Debt any payment, dividend or distribution of any kind out of the sale
19 of any assets of HMA Sales which would otherwise be payable or deliverable with respect to
20 the Subordinated Debt; and (v) with respect to the Subordinated Debt, not to accelerate,
21 demand or receive payment, institute court proceedings or exercise any right or remedy against
22 HMA Sales or its assets, or assign or deliver to any person or entity other than Liberty any
23 Subordinated Debt or any evidence thereof or security or guaranty therefor, without Liberty's
24 prior written consent.
25
26
27
28

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1117 South Rancho Drive
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(702) 474-7557
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12. Numerous Events of Default have occurred under the Receivables Loan Agreement and Liberty Security Documents. As a result, Liberty has accelerated the Receivables Loan and HMA Sales' obligations under the Receivables Loan Agreement. As of January 24, 2007, at least the following sums are due and owing under the Receivables Loan Agreement:

Principal of Receivables Loan	\$3,616,048.53
Interest on Receivables Loan	159,819.13
Prepayment Fee for Receivables Loan (3%)	108,481.46
Balance of Loan Fee	27,132.63
Legal fees and costs	<u>32,753.28</u>
Total	\$3,944,235.03*

*together with continuing legal fees, costs and expenses incurred on or after January 1, 2007.

THE ROYAL HOTEL SALE

13. HMA Sales agreed to sell and convey for the purchase price of \$29,100,000.00 (the "Purchase Price") its interests in the Royal Hotel (including, without limitation, the Air Space Parcel and the development rights in the Time-Share Programs), pursuant to a Purchase and Sale Agreement dated as of May 22, 2006 (the "Sale Agreement") with Pacific Ocean Management, LLC, as amended by a First Amendment to Purchase and Sale Agreement executed as of December 14, 2006 (the "First Amendment", together with the Sale Agreement, collectively the "P&S Agreement") with Royal Center Associates, LLC and Royal Resort Enterprises, LLC (collectively, the "Buyers"). A true and correct copy of the P&S Agreement is attached hereto as Exhibit B and incorporated herein by reference.

14. Without Liberty's prior knowledge or consent, upon information and belief HMA Sales held a first closing under the P&S Agreement on December 22, 2006 (the "First Closing"), at which (a) HMA Sales conveyed to the Buyers, by bargain and sale deed, title to

HANEY, WOLOSON & MULLINS
1117 South Rancho Drive
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1 the Royal Hotel (including the Air Space Parcel), and (b) the Buyers delivered in escrow to
2 First American Title Insurance Company ("First American"), as escrow agent, their Promissory
3 Note Secured by Deed of Trust in the face amount of \$5,201,442.17 (the "Seller Note") in
4 favor of HMA Sales, securing the Buyers' promise to pay ninety days thereafter at a second
5 closing (the "second Closing") the unpaid balance of the Purchase Price. The Seller Note is
6 secured by Buyers' Deed of Trust against the Royal Hotel dated as of and recorded on
7 December 22, 2006, in favor of HMA Sales, as beneficiary (the "Seller Deed of Trust",
8 together with the Seller Note, collectively the "Seller Note & DOD"). True and correct copies
9 of the Seller Note & DOD are attached hereto as Exhibit C and incorporated herein by
10 reference.
11

12
13 15. Upon information and belief, First American, as escrow agent, also holds in
14 escrow the sum of \$450,000.00 arising out of the First Closing, most of which is payable to
15 HMA Sales under the P&S Agreement.
16

17 16. The Seller Note was placed in escrow with First American as security for HMA
18 Sales' obligation to pay in full Liberty's Receivables Loan on or before the Second Closing.
19 Under Section 6 of the First Amendment, the parties thereto agreed that the Royal Hotel
20 remains subject to the Liberty Deed of Trust and Liberty Assignment of Property Rights. The
21 parties thereto further agreed that First American shall not release the proceeds of the Seller
22 Note unless and until First American receives reconveyances and releases, in recordable form,
23 of the Liberty Deed of Trust and Liberty Assignment of Property Rights so as to enable First
24 American to issue an endorsement to its title policy deleting the Liberty Bank Deed of Trust
25 and Liberty Bank Assignment of Property Rights from Schedule B of the title policy.
26

27
28 17. Liberty's Receivables Loan was not paid-off at the First Closing and remains
immediately due and payable in full.

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LIBERTY'S CLAIMS

18. Under the applicable Liberty Security Documents, Liberty holds a deed of trust, liens, security interests and/or assignments in, inter alia, the Air Space Parcel and the remaining sale proceeds paid or payable under the P&S Agreement including, without limitation, (i) the proceeds payable under the Seller Note, (ii) the sale proceeds payable to HMA Sales that are held or to be held in escrow by First American, and (iii) any and all sale proceeds that were paid and/or disbursed to other persons and entities and hereinafter are set aside, avoided and/or otherwise invalidated (all of the foregoing collateral and sale proceeds set forth in paragraph 18 herein are collectively referred to as the "Encumbered Collateral and Sale Proceeds").

19. Liberty's rights, deed of trust, liens, security interests and/or assignments under the Liberty Security Documents have priority over any alleged claims and/or interests of the Debtors, HMA Sales and their officers, managers, members, agents, escrow agents and all other persons or entities acting on their behalf, with respect to the Encumbered Collateral and Sale Proceeds.

20. Liberty's Receivables Loan is required to be paid in full out of the Encumbered Collateral and Sale Proceeds prior to any further disposition or payment of the same to the Debtors, HMA Sales and their officers, managers, members, agents, escrow agents and all other persons or entities acting on their behalf.

21. The Encumbered Collateral and Sale Proceeds are not property of the Debtors' estates. Rather, Debtors merely assert unsecured and unadjudicated claims against HMA Sales and have no property interest in, or lien against, the sale proceeds or the Royal Hotel (title to which has already been conveyed to the Buyers under and subject to the Liberty Security Documents).

1 22. Debtors claims arise out of funds allegedly loaned to and/or owed by USAIP
2 (not Liberty's borrower, HMA Sales), pursuant to a Promissory Note executed by USAIP dated
3 May 31, 2006, in the amount of \$58,374,918.81 (the "USAIP Note").
4

5 23. Pursuant to Liberty's rights under the Subordination Agreements, without
6 Liberty's prior written consent, Debtors and USAIP are absolutely prohibited from receiving
7 payment with respect to the Subordinated Debt from HMA Sales until all of Liberty's Senior
8 Debt is paid.
9

10 24. The Subordinated Debt includes, without limitation, all liabilities and
11 obligations of any nature, whether or not contingent, existing at the time the Subordination
12 Agreements were made or any time thereafter, of HMA Sales to USACM and USAIP. The
13 Subordinated Debt, therefore, expressly includes any liabilities and obligations asserted or
14 alleged by Debtors and/or USAIP to be owed by or from HMA Sales and its assets including,
15 without limitation, the claims asserted by Debtors against HMA Sales and its assets in this
16 adversary proceeding.
17

18 25. Liberty did not and does not consent to Debtors or USAIP receiving payment
19 with respect to any of the Subordinated Debt from HMA Sales until all of Liberty's Senior
20 Debt is paid.
21

22 26. Under the Receivables Loan Agreement, HMA Sales is prohibited from selling
23 any of its assets other than sales of Time-Share Interests in the ordinary course of business for
24 fair consideration.

25 27. Liberty is entitled to a declaration of its rights under the Liberty Security
26 Documents with respect to the Encumbered Collateral and Sale Proceeds including, without
27 limitation, declarations:
28

HANEY, WOLOSON & MULLINS
1117 South Rancho Drive
Las Vegas, Nevada 89102
(702) 474-7557
(702) 474-7009 Fax

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1 a. that Liberty's rights, deed of trust, liens, assignments and security
2 interests under the Liberty Security Documents have priority over any alleged claims and/or
3 interests of the Debtors, HMA Sales and their officers, managers, members, agents, escrow
4 agents and all other persons or entities acting on their behalf, with respect to the Encumbered
5 Collateral and Sale Proceeds;
6

7 b. that Debtors, HMA Sales and their officers, managers, members, agents,
8 escrow agents and all other persons or entities acting on their behalf, are barred and prohibited
9 from receiving payment with respect to any of the Subordinated Debt from HMA Sales until all
10 of Liberty's Senior Debt is paid;
11

12 c. that Debtors, HMA Sales and their officers, managers, members, agents,
13 escrow agents and all other persons or entities acting on their behalf, are required to hold in
14 trust for Liberty and to promptly pay or deliver to Liberty for application to or as collateral for
15 the Senior Debt any payment, dividend, proceeds or distribution of any kind with respect to the
16 Subordinated Debt from HMA Sales; and
17

18 d. that Debtors are required to assign to Liberty any liabilities and
19 obligations asserted or alleged by Debtors to be owed by or from HMA Sales and its assets
20 including, without limitation, the claims and interests asserted by Debtors against HMA Sales
21 and its assets in this adversary proceeding, together with all security and guarantees therefor,
22 until all of Liberty's Senior Debt is paid.
23

24 28. Liberty will suffer immediate and irreparable injury if Liberty's rights, deed of
25 trust, liens, assignments and security interests under the Liberty Security Documents against the
26 Encumbered Collateral and Sale Proceeds are not protected by the Court.
27

28 29. On January 3, 2007, the Bankruptcy Court entered a Temporary Restraining
Order ("TRO-1"), enjoining the original defendants in this action and their officers, managers,

1 members, escrow agents and all others acting on their behalf “from distributing any proceeds
2 resulting from the sale of the Royal Hotel Property until further order of this Court or
3 expiration of this TRO.”

4
5 30. On January 19, 2007, the Bankruptcy Court entered a Stipulated Temporary
6 Restraining Order (“TRO-2”), continuing the effect of TRO-1 until further order of the Court,
7 and scheduling a hearing on March 2, 2007 on plaintiffs’ motion for preliminary injunction and
8 application for pre-judgment writ of attachment.

9
10 31. Liberty is entitled to relief from TRO-1 and TRO-2 to preserve, enforce and
11 protect Liberty’s senior rights, deed of trust, liens, assignments and security interests under the
12 Liberty Security Documents and to permit the payment in full of Liberty’s Receivables Loan
13 out of the Encumbered Collateral and Sale Proceeds prior to any payments or disbursements
14 arising therefrom to the Debtors, HMA Sales and their officers, managers, members, agents,
15 escrow agents and all other persons or entities acting on their behalf.

16
17 WHEREFORE, for the foregoing reasons, Liberty respectfully demands judgment
18 and/or an order against the Debtors and HMA Sales, jointly and severally:

19 (a) Declaring Liberty’s rights under the Liberty Security Documents with respect to
20 the Encumbered Collateral and Sale Proceeds including, without limitation, declarations:

21 (i) that Liberty’s rights, deed of trust, liens, assignments and security
22 interests under the Liberty Security Documents have priority over any alleged claims and/or
23 interests of the Debtors, HMA Sales and their officers, managers, members, agents, escrow
24 agents and all other persons or entities acting on their behalf, with respect to the Encumbered
25 Collateral and Sale Proceeds;

26 (ii) that Debtors, HMA Sales and their officers, managers, members, agents,
27 escrow agents and all other persons or entities acting on their behalf, are barred and prohibited
28

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1 receiving payment with respect to any of the Subordinated Debt from HMA Sales until all of
2 Liberty's Senior Debt is first paid;

3 (iii) that Debtors, HMA Sales and their officers, managers, members, agents,
4 escrow agents and all other persons or entities acting on their behalf, are required to hold in
5 trust for Liberty and to promptly pay or deliver to Liberty for application to or as collateral for
6 the Senior Debt any payment, dividend, proceeds or distribution of any kind with respect to the
7 Subordinated Debt from HMA Sales; and
8

9 (iv) that Debtors are required to assign to Liberty any liabilities and
10 obligations asserted or alleged by Debtors to be owed by or from HMA Sales and its assets
11 including, without limitation, the claims and interests asserted by Debtors against HMA Sales
12 and its assets in this adversary proceeding, together with all security and guarantees therefor,
13 until all of Liberty's Senior Debt is first paid.
14

15 (b) Vacating and/or modifying TRO-1, TRO-2 and any other relief granted in this
16 action to preserve and protect Liberty's senior rights, deed of trust, liens, assignments and
17 security interests under the Liberty Security Documents and Liberty's right to payment in full
18 of Liberty's Receivables Loan out of the Encumbered Collateral and Sale Proceeds prior to any
19 payments or disbursements related thereto or arising therefrom to the Debtors, HMA Sales and
20 their officers, managers, members, agents, escrow agents and all other persons or entities acting
21 on their behalf;
22

23 (c) Enjoining Debtors, HMA Sales and their officers, managers, members, agents,
24 escrow agents and all other persons or entities acting on their behalf, from (i) violating the
25 Subordination Agreements, receiving payment with respect to any of the Subordinated Debt
26 from HMA Sales until all of Liberty's Senior Debt is paid, and/or (ii) interfering with,
27 impairing, encumbering, transferring, dissipating or otherwise receiving, taking possession or
28

HANEY, WOLOSON & MULLINS
1117 South Rancho Drive
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(702) 474-7557
(702) 474-7009 Fax

1 disposing of any of the Encumbered Collateral and Sale Proceeds, until Liberty's Receivables
2 Loan is first paid in full;

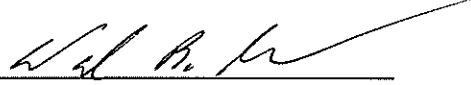
3 (d) Declaring that the relief granted to Liberty does not operate to release or
4 discharge any lien, deed of trust or security interest in favor of Liberty securing the Receivables
5 Loan unless such relief results in the payment in full of the Receivables Loan; and
6

7 (e) Granting such other and further relief as is just and appropriate to confirm and
8 ensure that Debtors, HMA Sales and their officers, managers, members, agents, escrow agents
9 and all other persons or entities acting on their behalf, do not receive and/or recover any of the
10 Encumbered Collateral and Sale Proceeds, until Liberty's Receivables Loan is first paid in full.
11

12
13 Dated: January 31, 2007

Respectfully submitted,

HANEY, WOLOSON & MULLINS

14
15
16 By: 
17 Wade B. Gochnour, Esquire
18 Nevada Bar No. 6314
19 Aryn M. Fitzwater, Esquire
20 Nevada Bar No. 8802
21 1117 South Rancho Drive
22 Las Vegas, Nevada 89102
23 Telephone: (702) 474-7557

-and-

24 **WHITE AND WILLIAMS LLP**
25 Steven E. Ostrow, Esquire
26 PA Bar ID # 50568
27 1800 One Liberty Place
28 Philadelphia, PA 19103-7395
Telephone: (215) 864-7000

Attorneys for Liberty Bank

HANEY, WOLOSON & MULLINS
1117 South Rancho Drive
Las Vegas, Nevada 89102
(702) 474-7557
(702) 474-7009 Fax